



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 641,795	08/18/2000	James M. Zavislan	ML-0459C	6913

24902 7590 03 05 2003

KENNETH J. LUKACHIER
3136 WINTON ROAD SOUTH, SUITE 204
ROCHESTER, NY 14623

EXAMINER

PHAM, HOA Q

ART UNIT PAPER NUMBER

2877

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/641,795

Applicant(s)

ZAVIDLAN, JAMES M.

Examiner

Hoa Q. Pham

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 27 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 30-33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 39-42 is/are allowed.
- 6) ☐ Claim(s) 30-33 and 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/27/03 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 30-33 and 35-38 are rejected under 35 U.S.C. 102(b) as being fully anticipated by Koester (4,241,257).

Regarding claims 30, 32-33, 35, and 37-38; Koester teaches that the scanning microscopic apparatus (figures 1 and 4) can be modified to a differential interference microscopy by inserting a polarizer and a Wollaston prism between the mirror M1 and objective lens L3 (column 11 lines 31-34). Since the polarizer and Wollaston prism are located between the objective lens L3 and Mirror M1, it is inherent that the beams are overlapping in the medium outside the imaged section. It is also noted that light directed

into the medium and returned light collected from the medium share substantially the objective lens (L3) (figure 1 or 7).

Regarding claims 31 and 36, Koester uses a Wollaston prism which is the same as the present invention used, thus the beams are incident the medium at spots spaced in at least one direction along the image plane (20).

Allowable Subject Matter

4. Claims 39-42 are allowed.

Response to Arguments

5. Applicant's arguments filed 1/27/03 have been fully considered but they are not persuasive.

- a. Applicant's remarks, page 3, argue that the present claims 30 and 35 recite that **light directed into the medium and returned light collected from the medium substantially share a common object** and **Koester uses half of the aperture of objective lens (L3) for illuminating the specimen and light returned from the specimen pass through the other half of the aperture of lens L3, thus Koester does not share a common objective.** The argument is not deemed to be persuasive because even though Koester shows the light passes through the objective and returned through the objective at different half of aperture, however, there is only one objective lens L3 (figures 1, 4, 5, and 7), thus the directed light and returned light still share the same objective lens.

Art Unit: 2877

b. Applicant also states that **"Although the light illuminating and light returning may use the same objective in Koester, such light illuminating and light returning do not substantially share that objective since the illuminating light path and returning light path each utilize one half of the objective's aperture"**. As understood, applicant admits that the illuminating light and returning light use the same objective lens in Koester. Thus, they are sharing the objective lens even though the light paths are different.

In view of the foregoing, applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (703) 308-4808. The examiner can normally be reached on 6:30 AM to 5 PM Monday through Thursday.

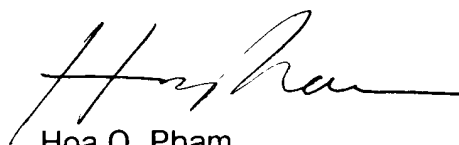
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703) 308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Application/Control Number: 09/641,795

Page 5

Art Unit: 2877

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, appearing to read 'Hoa Q. Pham', written in a cursive style.

Hoa Q. Pham
Primary Examiner
Art Unit 2877

Pham/hp
March 3, 2003